

or is not necessary to achieve the underlying purpose of the rule.”

*Code Case N-640 (formerly Code Case N-626)*

OPPD has requested, pursuant to 10 CFR 50.60(b), an exemption to use ASME Code Case N-640 (previously designated as Code Case N-626) as the basis for establishing the P-T limit curves. Appendix G to 10 CFR part 50 has required use of the initial conservatism of the  $K_{Ia}$  equation since 1974 when the equation was codified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, the industry has gained additional knowledge about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the  $K_{Ic}$  equation is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, the RPV P-T operating window is defined by the P-T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G, procedure.

The ASME Working Group on Operating Plant Criteria (WGOPC) has concluded that application of Code Case N-640 to plant P-T limits is still sufficient to ensure the structural integrity of RPVs during plant operations. The staff has concurred with ASME's determination. The staff has concluded that application of Code Case N-640 would not significantly reduce the safety margins required by 10 CFR part 50, Appendix G. The staff had concluded that application of Code Case N-640 would provide that adequate safety margins are maintained such that the underlying purpose of 10 CFR part 50, Appendix G is met, pursuant to 10 CFR 50.12(a)(2)(ii), for the Fort Calhoun Station RPV and reactor coolant pressure boundary (RCPB). Therefore, the staff concludes that Code Case N-640 is acceptable for application to the Fort Calhoun Station P-T limits.

The staff has determined that OPPD has provided sufficient technical bases for using the methods of Code Case N-640 for the calculation of the P-T limits for the Fort Calhoun Station RCPB. The staff has also determined that application of Code Case N-640 to the P-T limit calculations will continue to serve the purpose in 10 CFR part 50, Appendix G, for protecting the structural integrity of the Fort Calhoun RPV and RCPB. In this case, since strict compliance with the requirements of 10 CFR part 50, Appendix G, is not necessary to serve the underlying purpose of the regulation, the staff concludes that application of Code Case

N-640 to the P-T limit calculations meets the special circumstances provision stated in 10 CFR 50.12(a)(2)(ii), for granting this exemption to the regulation.

#### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants Omaha Public Power District an exemption from the requirements of 10 CFR part 50, Appendix G, for the Fort Calhoun Station.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 9008).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 28th day of February 2002.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25448; File No. 812-12770]

### Jackson National Life Insurance Company, et al.

February 27, 2002.

**AGENCY:** Securities and Exchange Commission (“SEC” or “Commission”).

**ACTION:** Notice of Application for an order under section 6(c) of the Investment Company Act of 1940 (the “Act”) granting exemptions from the provisions of sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to permit the recapture of contract enhancements applied to purchase payments made under certain deferred variable annuity contracts.

*Applicants:* Jackson National Life Insurance Company (“Jackson National”), Jackson National Separate Account—I (the “Separate Account”) and Jackson National Life Distributors, Inc. (“Distributor,” and collectively, “Applicants”).

*Summary of Application:* Applicants seek an order under section 6(c) of the Act to the extent necessary to permit the

recapture, under specified circumstances, of certain contract enhancements applied to purchase payments made under the deferred variable annuity contracts described herein that Jackson National will issue through the Separate Account (the “Contracts”), as well as other contracts that Jackson National may issue in the future through their existing or future separate accounts (“Other Accounts”) that are substantially similar in all material respects to the Contracts (“Future Contracts”). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (“NASD”) member broker-dealer controlling or controlled by, or under common control with, Jackson National, whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts or Future Contracts (“Affiliated Broker-Dealers”), and any successors in interest to the Applicants.

*Filing Date:* The Application was filed on November 21, 2001; an amendment substantially conforming to this notice will be filed during the pendency of the notice period.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2002, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, Jackson National Life Insurance Company, 1 Corporate Way, Lansing, Michigan 48951, Attn: Susan Rhee, Esq.; copies to Joan E. Boros, Esq., Jorden Burt LLP, 1025 Thomas Jefferson Street, NW, Suite 400 East, Washington, DC 20007-0805.

**FOR FURTHER INFORMATION CONTACT:** Harry Eisenstein, Senior Counsel, at (202) 942-0552, or William J. Kotapish, Assistant Director, at (202) 942-0670, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 ((202) 942-8090).

### Applicants' Representations

1. Jackson National is a stock life insurance company organized under the laws of the state of Michigan in June 1961. Its legal domicile and principal business address is 1 Corporate Way, Lansing, Michigan 48951. Jackson National is admitted to conduct life insurance and annuity business in the District of Columbia and all states except New York. Jackson National is ultimately a wholly-owned subsidiary of Prudential plc (London, England).

2. The Separate Account was established by Jackson National on June 14, 1993, pursuant to the provisions of Michigan law and the authority granted under a resolution of Jackson National's Board of Directors. Jackson National is the depositor of the Separate Account. The Separate Account meets the definition of a "separate account" under the federal securities laws and is registered with the Commission as a unit investment trust under the Act (File No. 811-08664). The Separate Account will fund the variable benefits available under the Contracts. The offering of the Contracts will be registered under the Securities Act of 1933 (the "1933 Act").

3. The Distributor is a wholly-owned subsidiary of Jackson National and serves as the distributor of the Contracts. The Distributor is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the NASD. The Distributor enters into selling group agreements with affiliated and unaffiliated broker-dealers. The Contracts are sold by licensed insurance agents, where the Contracts may be lawfully sold, who are registered representatives of broker-dealers which are registered under the 1934 Act and are members of the NASD.

4. The Contracts require a minimum initial premium payment of \$10,000 under most circumstances (\$2,000 for a qualified plan contract). Subsequent payments may be made at any time during the accumulation phase. Each subsequent payment must be at least \$500 (\$50 under an automatic payment plan). Prior approval by Jackson National is required for aggregate premium payments of over \$1,000,000.

5. The Contracts permit owners to accumulate contract values on a fixed basis through allocations to one of four fixed accounts (the "Fixed Accounts"),

including two "Guaranteed Fixed Accounts" which offer guaranteed crediting rates for specified periods of time (one and three years), and two "DCA+ Fixed Accounts" (used in connection with dollar cost averaging transfers, each of which from time to time offers special crediting rates).

6. The Contracts also permit owners to accumulate contract values on a variable basis, through allocations to one or more of the investment divisions of the Separate Account (the "Investment Divisions," collectively with the Fixed Accounts, the "Allocation Options"). 34 Investment Divisions are expected to be offered under the Contracts, but additional Investment Divisions may be offered in the future and some of those currently expected to be offered could be eliminated or combined with other Investment Divisions in the future. Similarly, Future Contracts may offer additional or different Investment Divisions.

7. Transfers among the Investment Divisions are permitted. The first 15 transfers in a contract year are free; subsequent transfers cost \$25. Certain transfers to, from and among the Fixed Accounts are also permitted during the Contracts' accumulation phase, but are subject to certain adjustments and limitations. Dollar cost averaging and rebalancing transfers are offered at no charge and do not count against the 15 free transfers permitted each year.

8. If one of the optional Contract Enhancement endorsements is elected, each time an owner makes a premium payment during the first contract year, Jackson National will add an additional amount to the owner's contract value (a "Contract Enhancement"). All Contract Enhancements are paid from Jackson National's general account assets. The Contract Enhancement is equal to two percent of the premium payment. Jackson National will allocate the Contract Enhancement to the Guaranteed Accounts and/or Investment Divisions in the same proportion as the premium payment allocation. The Contract Enhancement is not credited to any premiums received after the first contract year.

9. There is an asset-based charge for each of the Contract Enhancements. The Contract Enhancement has a 0.67% charge that applies for three years. These charges will also be assessed against any amounts an owner has allocated to the Guaranteed Fixed Accounts, resulting in a credited interest rate of 0.67% less than the annual credited interest rate that would apply to the Guaranteed Fixed Accounts if the Contract Enhancement had not

been elected. However, the interest rate will never go below three percent.

10. Jackson National will recapture all or a portion of any Contract Enhancements by imposing a recapture charge whenever an owner: (i) Makes a total withdrawal within the recapture charge period (three years after a first year payment) or a partial withdrawal of corresponding premiums within the recapture charge period in excess of those permitted under the Contracts' free withdrawal provisions, unless the withdrawal is made for certain health-related emergencies specified in the Contracts; (ii) elects to receive payments under an income option within the recapture charge period; or (iii) returns the Contract during the free look period.

11. The amount of the recapture charge varies, depending upon which Contract Enhancement is elected and when the charge is imposed, as follows:

Contract Enhancement Recapture Charge (as a percentage of first year premium payments)	
Completed Years Since Receipt of Premium	Recapture Charge (%)
0	1 2 3+
2	1.5 .75 0

12. The recapture charge percentage will be applied to the corresponding premium reflected in the amount withdrawn or the amount applied to income payments that remains subject to a withdrawal charge. Recapture charges only apply to premiums received in the first Contract Year.

13. Recapture charges will be waived upon death or exercise of a Terminal Illness claim, Accelerated Benefit claim, or Nursing Home claim. Recapture charges will be waived on minimum required distributions. Recapture charges will be applied upon annuitization, even in a situation where the Withdrawal Charge is waived. The amount recaptured will be taken from the Investment Division and the Guaranteed Fixed Accounts in the same proportion as the withdrawal charge. Partial withdrawals will be deemed to remove premium payments on a first-in-first-out basis (the order that entails payment of the lowest withdrawal and recapture charges).

14. Jackson National does not assess the recapture charge on any payments paid out as: death benefits; withdrawals necessary to satisfy the minimum distribution requirements of the Internal Revenue Code; if permitted by the owner's state, withdrawals of up to \$250,000 from the Separate Account or from the Fixed Accounts in connection with the owner's terminal illness or if the owner needs extended hospital or nursing home care as provided in the

Contract; or if permitted by the owner's state, withdrawals of up to 25% of contract value (12.5% for each of two joint owners) in connection with certain serious medical conditions specified in the Contract.

15. The contract value will reflect any gains or losses attributable to a Contract Enhancement described above. Contract Enhancements, and any gains or losses attributable to a Contract Enhancement, distributed under the Contracts will be considered earnings under the Contract for tax purposes and for purposes of calculating free withdrawal amounts.

16. The Contracts have a "free look" period of ten days after the owner receives the Contract (or any longer period required by state law). Contract value, without the deduction for any sales charges, is returned upon exercise of free look rights by an owner unless state law requires the return of premiums paid. The Contract Enhancement recapture charge reduces the amount returned.

17. In addition to the Contract Enhancement charges and the Contract Enhancement recapture charges, the Contracts have the following charges: mortality and expense risk charge of 1.50% for the first six years and 1.30% thereafter (each as an annual percentage of average daily account value); administration charge of 0.15% (as an annual percentage of average daily account value); contract maintenance charge of \$35 per year (waived if contract value is \$50,000 or more at the time the charge is imposed); a transfer fee of \$25 for each transfer in excess of 15 in a contract year (for purposes of which dollar cost averaging and rebalancing transfers are excluded); a commutation fee that applies only upon withdrawals from income payments for a fixed period; and a withdrawal charge that applies to total withdrawals, to certain partial withdrawals, and on the income date (the date income payments commence) if the income date is within a year of the date the Contract was issued.

18. In addition, the contracts have certain other charges for various optional features. These include an Earnings Protection Benefit charge of 0.30% (as an annual percentage of daily account value); a 20% additional free withdrawal benefit charge of 0.30% (as an annual percentage of daily account value); an optional death benefit charge of either 0.15% or 0.25% (as an annual percentage of daily account value), depending upon which (if any) optional death benefit endorsement is elected; and a charge for an optional guaranteed minimum income benefit.

19. The withdrawal charge for the Contracts varies, depending upon the contribution year of the premium withdrawn as follows:

Withdrawal Charge (as a percentage of premium payments):

Completed Years Since Receipt of Premium	0	1	2	3+
Withdrawal Charge (%)	8	7	6	0

20. The withdrawal charge is waived upon withdrawals to satisfy the minimum distribution requirements of the Internal Revenue Code and, to the extent permitted by state law, the withdrawal fee is waived in connection with withdrawals of: (i) up to \$250,000 from the Investment Divisions or the Guaranteed Fixed Accounts of the Contracts in connection with the terminal illness of the owner of a Contract, or in connection with extended hospital or nursing home care for the owner; and (ii) up to 25% (12.5% each for two joint owners) of contract value in connection with certain serious medical conditions specified in the Contract.

#### Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission pursuant to section 6(c) of the Act grant the exemptions requested below with respect to the Contracts and any Future Contracts funded by the Separate Account or Other Accounts that are issued by Jackson National and underwritten or distributed by the Distributor or Affiliated Broker-Dealers. Applicants undertake that Future Contracts funded by the Separate Account or Other Accounts, in the future, will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Subsection (i) of Section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such

account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the recapture of the Contract Enhancement in the circumstances set forth in the application would not deprive an owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the amount of the Contract Enhancement allocated to his or her Contract value upon receipt of a premium payment is not fully vested until three complete years following a premium. Until or unless the amount of any Contract Enhancement is vested, Jackson National retains the right and interest in the Contract Enhancement amount, although not in the earnings attributable to that amount. Thus, Applicants urge that when Jackson National recaptures any Contract Enhancement it is simply retrieving its own assets, and because a Contract owner's interest in the Contract Enhancement is not vested, the Contract owner has not been deprived of a proportionate share of the Separate Account's assets, *i.e.*, a share of the Separate Account's assets proportionate to the Contract owner's contract value.

4. In addition, Applicants state that it would be patently unfair to allow a Contract owner exercising the free-look privilege to retain the Contract Enhancement amount under a Contract that has been returned for a refund after a period of only a few days. If Jackson National could not recapture the Contract Enhancement, Applicants claim that individuals could purchase a Contract with no intention of retaining it and simply return it for a quick profit. Furthermore, Applicants state that the recapture of the Contract Enhancement relating to withdrawals or receiving income payments within the first three years of a premium contribution is designed to protect Jackson National against Contract owners not holding the Contract for a sufficient time period. According to Applicants, it would provide Jackson National with insufficient time to recover the cost of the Contract Enhancement, to its financial detriment.

5. Applicants represent that it is not administratively feasible to track the Contract Enhancement amount in the Separate Accounts after the Contract Enhancement(s) is applied. Accordingly, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the Separate Accounts, including any Contract Enhancement amounts. As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the Contract owner's Contract value did not include any Contract Enhancement. Jackson National nonetheless represents that the Contracts' fees and charges, in the aggregate, are reasonable in relation to service rendered, the expenses expected to be incurred, and the risks assumed by Jackson National.

6. Applicants submit that the provisions for recapture of any Contract Enhancement under the Contracts do not violate sections 2(a)(32) and 27(i)(2)(A) of the Act. Applicants assert that the application of a Contract Enhancement to premium payments made under the Contracts should not raise any questions as to compliance by Jackson National with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Contract Enhancement under the circumstances described in the Application, without the loss of relief from Section 27 provided by Section 27(i).

7. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c-1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

8. It is possible that someone might view Jackson National's recapture of the Contract Enhancements as resulting in

the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that the recapture of the Contract Enhancement does not violate Rule 22c-1. The recapture of some or all of the Contract Enhancement does not involve either of the evils that Rule 22c-1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it; and (ii) other unfair results, including speculative trading practices. To effect a recapture of a Contract Enhancement, Jackson National will redeem interests in a Contract owner's Contract value at a price determined on the basis of the current net asset value of the Separate Accounts. The amount recaptured will be less than or equal to the amount of the Contract Enhancement that Jackson National paid out of its general account assets. Although Contract owners will be entitled to retain any investment gains attributable to the Contract Enhancement and to bear any investment losses attributable to the Contract Enhancement, the amount of such gains or losses will be determined on the basis of the current net asset values of the Separate Accounts. Thus, no dilution will occur upon the recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. Applicants assert that, because neither of the harms that Rule 22c-1 was meant to address is found in the recapture of the Contract Enhancement, Rule 22c-1 should not apply to any Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c-1, Applicants request an exemption from the provisions of Rule 22c-1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Contracts.

9. Applicants submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Applicants assert that

investors would receive no benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in the Application.

Applicants further submit, for the reasons stated herein, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-5269 Filed 3-5-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45489/March 1, 2002]

### Order Making Fiscal 2002 Mid-Year Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Securities Exchange Act of 1934

#### I. Background

Section 31 of the Securities Exchange Act of 1934 ("Exchange Act") requires each national securities exchange and national securities association to pay transaction fees to the Commission.<sup>1</sup> Specifically, Section 31(b) requires each national securities exchange to pay the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on the exchange.<sup>2</sup> Section 31(c) requires each national securities association to pay the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association otherwise than on an exchange.<sup>3</sup>

The Investor and Capital Markets Fee Relief Act ("Fee Relief Act") recently amended Section 31 to change the fee rates applicable under Sections 31(b) and (c).<sup>4</sup> The Fee Relief Act established an initial rate of \$15 per \$1,000,000 of the aggregate dollar amount of sales of

<sup>1</sup> 15 U.S.C. 78ee.

<sup>2</sup> 15 U.S.C. 78ee(b).

<sup>3</sup> 15 U.S.C. 78ee(c).

<sup>4</sup> Pub. L. 107-123, 115 Stat. 2390 (2002).